Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Parts 73 and 74 of the	)	
Commission's Rules to Establish Rules for Digital	)	MB Docket No. 03-185
Low Power Television, Television Translator, and	)	
Television Booster Stations and to Amend Rules	)	
For Digital Class A Television Stations	)	

COMMENTS OF FOX TELEVISION STATIONS, INC.
AND FOX BROADCASTING COMPANY

Fox Television Stations, Inc. ("FTS") and Fox Broadcasting Company ("FBC", and collectively with FTS, "Fox") respectfully submit these comments in response to the above-captioned Notice of Proposed Rulemaking (the "*Notice*"), which proposes to establish a digital broadcast service for low power television and television translator stations. Fox strongly endorses the creation of this new service, subject to the suggestions and recommendations contained herein, and Fox hereby also offers answers to several of the questions raised in the *Notice*.

Background

FTS owns and operates 35 full power television stations in markets across the United States. FBC operates a national television broadcast network with more than 150 full power television station affiliates. Together, FTS and FBC provide high-quality local and national programming to virtually every American television household – from the metropolis of New York City to tiny North Platte, Nebraska. Fox considers it vitally important to ensure that its programming is available to Americans in all parts of the country, including unserved and underserved rural areas where viewers face over-the-air reception difficulties. Indeed, it is precisely in those areas that television translator stations have played a crucial role, making it

possible for many rural viewers to receive the same high quality over-the-air programming available in the nation's largest markets.

Fox believes, therefore, that a properly constructed regulatory regime for a new digital translator service holds the potential to aid rural viewers dramatically in their ability to receive over-the-air television during and after the digital transition. Consequently, Fox supports the proposals in the *Notice* but urges the Commission to take into account the following recommendations to ensure that the new digital service can be initiated efficiently and effectively.

Definitional Issues

The *Notice* asks a fundamental definitional question – should there continue to be a regulatory distinction between low power television stations and translator stations in the digital environment?[1] Fox respectfully submits that the Commission identified a number of strong policy reasons to maintain a definitional distinction between the two types of stations. Most importantly, as the *Notice* recognizes, translator stations currently provide service to areas of the country where direct reception of full power stations is impossible due to distance or intervening terrain.[2] Indeed, there are now approximately 4,700 analog translators – mostly in rural parts of the Western United States – which often serve as their communities' only free over-the-air television service.[3]

The Commission should recognize that translators can play an equally vital role in the digital environment. Like their analog counterparts, digital translators will provide many communities with the only available free over-the-air television service. These digital stations will make it possible for rural Americans to receive the same benefits of high-quality digital

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1 *See Notice*, at ¶ 20.

2 *See id.* at ¶ 6.

3 *See id.*

programming that will be available to the viewers of full power stations in the nation's largest markets. Consequently, the Commission should require that digital translators simultaneously retransmit the entire signal of an associated full power station, just as the Commission's rules require for analog translators.[4] Fox supports the *Notice*'s proposed definition of a digital translator: "a station operating for the purpose of retransmitting the programs and signals of a DTV broadcast station for reception by the general public, without significantly altering any characteristic of the original signal other than its frequency and amplitude."[5]

The Commission asks whether it should permit digital translators to "rebroadcast . . . multiple video program streams of different broadcast stations pursuant to arrangements with the involved TV stations licensees."[6] Fox submits that, at least until completion of the digital transition, digital translators should pass through the entire signal of digital full power stations irrespective of any arrangements with the licensee. If digital translators do not pass through the entire signal of a full power station, viewers already at risk of underservice will be robbed of the full benefits of digital television – particularly high definition programming, as the Commission recognizes.[7] The Commission should not adopt regulations that would impede the flow of high definition programming to rural areas.[8]

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4 *See* 47 C.F.R. § 74.731. Like analog translators, digital translators should be allowed to originate programming only to make emergency warnings and for an additional 30 seconds per hour to make public service announcements (including requests for financial support necessary to the continued operation of the station). In addition, digital translators should be permitted to modify the PSIP to allow for proper tuning.

5 *See Notice*, at ¶ 12.

6 *Id.* at ¶ 16.

7 *See id.*

8 The Commission also asks whether digital translator multicasting (as defined above) is a concept worthy of future consideration. *See id.* at ¶ 16. Fox believes that it is premature

Second, there is no sound policy reason to permit digital translators to alter the signals of full power stations. The Commission suggests that translator licensees may be unwilling to terminate their analog service during the digital transition, potentially leaving translator viewers "unable to receive DTV signals of all of the analog TV stations they are accustomed to viewing."[9] The Commission's digital simulcasting rules substantially mitigate this concern, however.[10] Beginning April 1, 2004, each digital full power station is required to simulcast 75% of the video programming available on its paired analog channel. By April 1, 2005, a time when most digital translator stations could be expected to begin operating, the simulcasting requirement increases to 100%. These rules will ensure that, at a minimum, viewers of analog translator stations will be able to receive the exact same video programming available on the DTV stations paired with the translators' primary analog stations.

Authorization of New Digital Stations

As the *Notice* recognizes, the success of the new service will depend in large part on the Commission's ability to quickly transition current analog licensees to digital and to provide opportunities for new digital entrants.[11] Fox supports the Commission's plan to permit current analog licensees to convert their station to digital service by submitting a minor change application during rolling, one-day filing windows.[12] Fox also acknowledges the importance of allowing "incumbent station operators the initial opportunity to seek available channels for" new

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to make a determination about this proposal, and the Commission should reexamine this issue after the completion of the digital transition.

9 *Id.*

10 *See* 47 C.F.R. § 73.624(f).

11 *See Notice*, at ¶ 97.

12 *See id.* at ¶ 92.

digital stations in their communities.[13] These incumbent-first opportunities will help minimize disruption to viewers who currently rely on analog services. Furthermore, Fox strongly supports the Commission's proposal to open unrestricted one-day, first-come first-serve filing windows for new stations following the incumbent-only window.[14]

In each of these cases, the Commission should move expeditiously to process and grant applications for new digital low power and translator stations. Any undue delay would only serve to hinder the digital transition and would limit the opportunities available to "new entrants willing and able to operate stations within a relatively short period of time."[15] Therefore, Fox suggests that the Commission establish a processing guideline which contemplates the grant of all unopposed applications for new digital low power and translator stations within 60 days of the applications being accepted for filing – so long as they comply with the technical rules and interference criteria applicable to the new service.[16]

Protection Issues

If the Commission is to launch a new digital low power and translator service with the least amount of disruption to current analog viewers, Fox recognizes that there will need to be a

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13 *Id.* at ¶ 99.

14 *See id.* at ¶ 98.

15 *Id.* at ¶ 104.

16 It is vital that the Commission process these applications as quickly as possible in order to hasten the digital transition and speed new services to consumers. In all likelihood, a new digital service will generate a large number of applications from interested parties, which will create a significant amount of additional processing work for the Commission. Given the Commission's myriad other responsibilities, it is possible that the proposed new service would find itself behind other initiatives on the Commission's list of priorities. Therefore, the Commission should consider hiring a third party contractor to process applications for digital low power and translator stations. Utilizing a third party contractor would ensure that applications are processed without any unintended delays. The costs of contracting with a third party would be borne by the applicants in the form of application fees.

period of time when new digital stations must provide interference protection to existing analog stations. At the same time, however, the Commission has long recognized that the future of the over-the-air television system in the United States depends upon a successful conversion to digital. In that regard, the Commission should not provide analog low power and translator stations an unlimited amount of time to retain interference protection rights. Rather, the Commission should establish as part of this proceeding a schedule pursuant to which digital low power and translator stations will receive interference priority over analog stations.

Indeed, many viewers of analog translators today receive poor quality signals because the quality of an analog signal is degraded by retransmission. Digital translators will not only ensure that underserved viewers receive a better signal, but the stations also will provide these viewers with all of the benefits of the new digital services that are being made available to viewers capable of receiving full power stations (including high definition programming).

Moreover, unless the Commission establishes a schedule pursuant to which digital low power and translator stations will become the priority, there will be little incentive for analog stations to convert their operations. In particular, the Commission should incentivize analog low power operators to convert to digital as expeditiously as possible. Operators of analog low power stations should not be permitted to tie up the spectrum, preventing the entry of new digital stations offering higher quality programming.

The Commission should therefore provide that analog low power stations desiring to convert to digital operation must file their minor change applications no later than one year following the opening of the first one-day filing window available to incumbent analog

operators.[17] Any analog low power station that fails to file a minor change conversion application by this date would become secondary to new digital low power and translator stations. In addition, the Commission should provide that all other analog low power stations will lose interference protection rights beginning on the earlier of the following dates: (i) the statutorily prescribed deadline for the cessation of all analog television services;[18] or (ii) 36 months following the date upon which an analog low power or translator station receives a construction permit to convert its operations to digital.[19] Any analog low power station that plans to convert to digital but has not done so by the above-described deadline would have to go dark (or reduce power) if it causes interference to digital low power or translator stations.[20] Given that the vast majority of analog low power stations are located in highly populated areas, and that new digital

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17 Moreover, the Commission should provide that, beginning with the opening of the first one-day filing window available to incumbent analog operators, no application proposing to construct a new analog low power or translator station will be accepted for filing.

18 *See* 47 U.S.C. § 309(j)(14). The deadline is currently set for December 31, 2006, subject to the Commission's authority to extend the date under certain circumstances.

19 The Commission's rules require all low power and translator stations to be fully constructed within 36 months of the date that they receive a construction permit. *See* 47 C.F.R. § 73.3598(a); *see also Notice*, at ¶ 116 (proposing the same build-out time period for the new digital service).

20 Fox believes that digital low power and translator stations also should be protected from interference from Class A low power stations that continue to operate in analog mode after the applicable date described above. Enabling analog Class A low power stations to cause interference to digital stations for an indefinite period of time would be just as detrimental to the digital transition. Moreover, Section 336(f)(4) of the Communications Act does not preclude this proposed approach. The law only provides that the Commission cannot force analog low power and translator stations to convert to digital before the end of the transition. If the Commission is to ensure a timely and successful digital transition, and provide at-risk viewers with the benefits of new services, it must afford digital low power and translator stations priority over analog operators. Licensees that desire to ensure interference protection going forward should avail themselves of the opportunity to convert to digital – indeed, the Commission's proposal would give them the first chance to do so. Section 336(f)(4) provides no protection to analog operators who have signaled that they do not intend to convert.

translators are likely to be constructed in rural areas, this proposal should not be expected to cause displacement to a significant number of low power stations.

Analog translators should be treated differently than low power stations since it would make little sense to end their priority status so long as their primary full power stations continue to broadcast in analog. Accordingly, analog translators should be permitted to remain on the air for as long as their associated full power stations continue to provide analog television service. To facilitate the roll-out of new digital translators (and their new services), however, the Commission should permit digital translator stations to increase the permissible level of interference to analog translators beginning on December 31, 2006 (so long as the increase would not force an analog station off the air).

Fox recognizes that making analog low power and translator stations secondary to their digital counterparts may constitute a license modification that would entitle the analog licensee to a hearing under Section 316 of the Communications Act.[21] Fox submits, however, that very few analog stations which have failed to pursue timely conversion are likely to seek a hearing. In any event, the need to ensure a successful digital transition provides ample public interest justification for this approach, as required by Section 316.

Incidentally, the *Notice* asks whether the statutory deadline contained in Section 309(j)(14) of the Communications Act "applies to analog authorizations in the low power service."[22] Fox submits that the statute applies to all analog television services, including analog low power and translator stations. Since a key goal of the law is to clear analog stations from the spectrum, Congress surely intended for the statute to apply to all analog stations. Congress would not have desired to leave a small group of television stations perpetually operating in a

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21 *See* 47 U.S.C. § 316.

22 *See Notice*, at ¶ 113.

legacy technology – which would only serve to discourage the digital transition in rural areas. Any other interpretation of the statute would contradict the clear policy goals of the digital transition.

Interference Methodology

The *Notice* asks for comment on an appropriate interference prediction methodology for use in processing applications for new digital low power and translator stations.[23] Given the Commission's desire to "explore every means of maximizing channel use" for the new digital service, Fox suggests that the Commission abandon the contour protection approach currently used for analog low power and translator stations.[24] As the *Notice* recognizes, the current contour protection approach "has shortcomings that could result in fewer opportunities" for new digital low power and translator stations.[25] Specifically, the current approach is far too imprecise and fails to account for the impact that intervening terrain has on interference. Thus, the current approach is overly conservative and would compel the Commission to unnecessarily reject applications for new stations even if they would not cause any actual interference.

Fox proposes that the Commission adopt a new interference prediction methodology. Although the *Notice* points to the Longley-Rice propagation model described in OET Bulletin 69 as one possible alternative,[26] Fox does not believe that the Longley-Rice model would be appropriate for the new service. Instead, the Commission should rely upon the more reliable

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23 *See id.* at ¶ 41.

24 *Id.* at ¶ 36.

25 *Id.* at ¶ 42.

26 *See id.* at ¶ 43.

TIREM[27] propagation model designed for the Department of Defense by IITRI/Alion. The TIREM model has been extensively tested and is constantly updated, making it a far more accurate tool for evaluating potential interference.[28] As noted above, if the creation of software necessary to apply the TIREM model to the new service would tax available time and resources, the Commission should consider outsourcing the task to a third party contractor.[29]

Conclusion

In short, Fox strongly supports the creation of a new digital service for low power and translator stations, and urges the Commission to move quickly to establish the framework for this service while taking into account the foregoing recommendations.

Respectfully submitted,

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27 TIREM stands for Terrain Integrated Rough Earth Model.

28 *See Notice*, at ¶ 47 (noting that using the Longley-Rice model "could under-predict . . . service and interference potential").

29 *See, e.g., supra*, note 16.